Regulated Self-Regulation
An Approach for Shared Responsibilities

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Agenda

- Introduction saferinternet.de
- German State Media Authorities: Remits and Organisational Structure
- Protection of Minors in the Media: The German Approach
- The Legal Background
- In Practice: Control Procedure & Assessment
- Case Studies
- Conclusion and Prospects
Saferinternet.de
Safer Internet Centre Germany

- Part of Connecting Europe Facility (CEF), Telecom programme
  GD Connect, European Commission

Awareness Centre
Helpline
Hotlines

Nummer gegen Kummer

eklicksafe.de
Safer Internet Centre Germany

klicksafe.de
Safer Internet Centre Germany

LMK
Landsmannschaft für Kinder
Landesmannschaft für Kinder

LFM:
Landsmannschaft für Kinder
Landesmannschaft für Kinder
German State Media Authorities:
Remits and Organisational Structure
State Media Authorities in Germany
Remits & Structure

- After WWII: Reorganisation German media system (dual broadcasting system)
  - Broadcasting lies within the competence of the federal States
  → To ensure independence from government!

- 14 State Media Authorities founded in the mid 1980s

- Original remit: Licensing, monitoring, structuring, and promoting commercial broadcasting in Germany

- 2003: Extension of field of activity to controlling telemedia

- During the last years: Promotion of media literacy as key responsibility of LMK
State Media Authorities in Germany

Overview
State Media Authorities in Germany
“die medienanstalten”

- Joint management office of media authorities ("die medienanstalten") located in Berlin

- Remit: Coordination of day-to-day business of decision-taking councils and commissions of state media authorities
State Media Authorities in Germany
“die medienanstalten”

- Cooperation conducted in decision-taking councils and commissions coordinating and aligning matters on a national level:
  - Commission on Licensing and Supervision (ZAK)
  - Conference of Chairpersons of the Decision Taking Councils (GVK)
  - Commission on Concentration in the Media (KEK)
  - Commission for the Protection of Minors in the Media (KJM)
State Media Authorities in Germany
“die medienanstalten”

- Commercial radio and commercial television broadcasters have to fulfil the requirements on content as specified in the Interstate Treaty on Broadcasting and Telemedia

- Telemedia: Media authorities are responsible for ensuring that specific requirements are met, for instance, regarding the protection of minors
Protection of Minors in the Media:  
The German Approach
Division of Competences
Online & Offline Media

For **films** and **games**
*(data media/physical media)*:
Protection of Young Persons Act
*(JuSchG)*

For **telemedia** and **broadcasting**:
Interstate Treaty on the Protection of Minors in the Media *(JMStV)*

German federation
*Federal Department For Media Harmful to Young People*

States/Länder
*State Media Authorities*
System of “Regulated Self-Regulation”

General Overview

- Books, Magazines, Audio: none
- Films, DVD: FSK
- Offline Computer Games: USK
- Public Television: self
- Commercial Television: fsf
- Online Communication/Internet: FSM
Regulatory Bodies
KJM & Jugendschutz.net

- Commission for the Protection of Minors (KJM)
  - Acts on behalf of the State Media Authorities
  - Decides on violation/non-violation of JMStV and on sanctions
  - Acknowledges Voluntary Self-Monitoring organisations
  - Certifies systems for age verification, definition for closed user groups
  - Certifies technical solutions protection for minors online

- Jugendschutz.net (Protection if minors.net)
  - Organizationally bound to KJM
  - Control of Internet content and report receiving mechanism (hotline)
  - Quick removal of offences and transmission to supervisory bodies and law enforcement
  - Training and consulting (workshops)
Results & Achievements (2016)
KJM & Jugendschutz.net

- 120,000 online offerings were checked by jugendschutz.net

- 6,130 problematic issues were found, 94 cases were forwarded to the KJM
  - 38% political extremism
  - 21% pornographic content
  - 16% content harmful to young people
  - 13% depictions of sexual exploitation
  - 6% impairing content
More than 7,000 cases were sent via online complaints mechanisms

In 66% of the cases illegal content was quickly removed from the Internet by the intervention of jugendschutz.net

In 9 out of 10 cases depictions of sexual exploitation could be quickly removed (Germany 100%, other countries 81%)
Voluntary Self-Regulation Organisation
Association of Voluntary Self-Regulating Multimedia Providers (FSM)

- Industry association of content/host/access providers (e.g. Telekom/Microsoft)
- Acknowledged as voluntary self-regulatory body by KJM
- In charge of assessment of online content and awarding rulings as to the conditions for putting it online (discretionary powers included: only members)
- Expert commission
- General advice on all questions regarding protection of minors
Results of Self-Regulation
Overview

- Self-Monitoring of Search Engine Providers (e.g., Google, Yahoo)
  - This kind of cooperation is unique throughout the world!

- Self-Monitoring of Mobile Phone Providers (e.g., T-Mobile, Vodafone)

- Self-Commitment of Mobile Phone Providers

- Self-Commitment of Chat Providers (e.g., codex)

- Network with climate of cooperative dialogue: Advisory Board Saferinternet.de

- Network on contract level: klicksafe (LMK & Ifm), NummergegenKummer, Jugendschutz.net, internet-beschwerdestelle.de (ECO & FSM)
The Legal Background:
The Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and Telemedia
The Interstate Treaty on The Protection of Minors in the Media (JMStV)

- Absolutely illegal content
  - § 4 Abs. 1 JMStV
  - Must not be distributed in broadcasting services and telemedia services

- Relatively illegal content
  - § 4 Abs. 2 JMStV
  - Can be transmitted within a closed user group

- Impairing content
  - § 5 JMStV
  - TV: watershed; Telemedia services: technical measures
The Interstate Treaty on The Protection of Minors in the Media (JMStV)

- Content being **absolutely illegal** (Art. 4)
  - Using insignia of organisations which are prohibited under the German Constitution,
  - Inciting to racial **hatred**
  - **Denying or playing down** acts committed under the National Socialist regime,
  - Presenting cruel or otherwise inhuman acts of **violence** against a person
  - Glorifying **war**,
  - Presenting children or adolescents in **unnatural blatantly sexual poses** (so-called posing, also applies to virtual presentations),
  - Violating human **dignity**, especially by presenting persons who are dying or exposed to serious physical or mental suffering.
  - Child **pornography**, violent pornography, pornography involving animals (also applies to virtual presentations)
  - Certain content being **indexed** by the Federal Review Board for Media Harmful to Young People (parts B and D of the list)
Example: Absolutely Illegal Content

- Terrorist propaganda, beheadings, torture, extreme depictions of violence
The Interstate Treaty on The Protection of Minors in the Media (JMStV)

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The Interstate Treaty on The Protection of Minors in the Media (JMStV)

- Content being **relatively illegal** (Art 4 (2)) can be transmitted in telemedia services if the provider has ensured that such content is accessible for adult persons only (closed user group)
  - Pornographic content
  - Certain indexed content (parts A and C of the list)
  - Content classified as being seriously impairing
The Interstate Treaty on The Protection of Minors in the Media (JMStV)

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The Interstate Treaty on The Protection of Minors in the Media (JMStV)

- Content **impairing development** (Art. 5)
  - Legal definition: Content which is suited to impair the development of children or adolescents into self-responsible and socially competent personalities
  - Providers shall ensure that children or adolescents of the relevant age groups do not normally see or hear such content (online: by technical measures/ TV: watershed)

- Watersheds in Germany
  - For some content rated **12 and up**, the watershed is between **20:00 and 06:00**
  - for content suitable for ages **16 and older** between **22:00 and 06:00**
  - for content suitable for adults (18 and older) between **23:00 and 06:00**
In Practice:
Control Procedure & Assessment
Case Studies
Case Study 1
Super Nanny

- Scripted reality show (with real persons)
- Broadcast by Commercial broadcaster RTL
- Super Nanny visits parents having problems in day-to-day education of their children
Case Study 1
Super Nanny

- **Human dignity** takes priority: It ranks first both the Declaration of Human Rights of the United Nations and in the German Constitution. **It is also a key objective of the Interstate Treaty**

- No human being may be treated like an object, be stripped of his or her rights, be exposed to inhumane and humiliating sanctions or treatments, be tortured or destroyed

- Due to its demands as an absolute value, the guarantee of human dignity requires **careful assessment and explanation**
Case Study 1
Super Nanny

- Assessment by KJM
  - Show violates human dignity
  - Children were physically and psychologically abused while being constantly beaten and shouted at in front of the camera
  - Some of these scenes were repeatedly shown both in the trailer and during the show
  - Show reduced children to mere objects for the voyeuristic satisfaction of the viewer, in showing their suffering, they were commercialized in an inadmissible way
  - There was no justifiable public interest in such an intensive depiction of mistreatment
Case Study 2
Bild.de Coverage on Syrian War

GESPRÄCHE MIT TEUFEL ASSAD
Habt ihr diese Bilder schon vergessen?

Foto: AFP
Case Study 2
Bild.de Coverage on Syrian War

- Art 4 (1), S. 1 Nr. 8 JMStV
  - “Without prejudice to any liability under the German Criminal Code, content is illegal if it violates human dignity, especially by presenting persons who are dying or who are or were exposed to serious physical or mental suffering while reporting actual facts without any justified public interest in such form of presentation or reporting being given.”
## Case Study 2 – Conflicting Rights

**Bild.de Coverage on Syrian War**

<table>
<thead>
<tr>
<th>kjm</th>
<th>Human Dignity</th>
<th>Bild.de</th>
<th>Freedom of Press</th>
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<tbody>
<tr>
<td></td>
<td>Photos violate human dignity</td>
<td></td>
<td>Justified public interest in such form of presentation or reporting is given</td>
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<tr>
<td></td>
<td>Problematic: Publication of not-pixelated photos of children being dead or</td>
<td></td>
<td>Decision of KJM is “horrible” and “wrong”, we must raise the world’s awareness</td>
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<tr>
<td></td>
<td>seriously suffering; the suffering and the death of the children is publicly</td>
<td></td>
<td>for the cruelty of Assad’s war</td>
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<tr>
<td></td>
<td>displayed and they are thereby degraded to mere objects of curiosity</td>
<td></td>
<td>Aim of the photos is to trigger outcry and indignation</td>
</tr>
<tr>
<td></td>
<td>Another way of reporting would have been possible without diminishing news</td>
<td></td>
<td>Not the photos violate human dignity, but Assad’s cruel warfare</td>
</tr>
<tr>
<td></td>
<td>value (for example by pixelating children’s faces)</td>
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Conclusion and Prospects
Conclusion and Prospects

- In general: The system works well.
- HOWEVER: New Challenges!
Legal Frameworks ... in progress

- Audiovisual Media Services Directive (AVMSD)
  - EU-wide coordination of national legislation on all audiovisual media, both traditional TV broadcasts and on-demand services

- European Regulators Group for Audiovisual Media Services (ERGA)
  - Advises European Commission on the implementation of the European Union's Audiovisual Media Services Directive (AVMSD)

- Network Enforcement Act (NetzDG) *German law 1 oct 2017*
  - Combat hate speech and fake news

- General Data Protection Regulation (GDPR)
  - Replaces the Data Protection Directive 95/46/EC
  - Designed to **harmonize** data privacy laws across Europe, to **protect and empower** all EU citizens data privacy and to **reshape** the way organizations across the region approach data privacy
What We Need...

- Regulation of media intermediaries, such as social networks and search engines?
  - State Media Authorities are currently assessing regulation options
  - Preliminary results recommend developing a new set of rules which:
    - establishes a code of conduct for media-intermediaries
    - while guaranteeing diversity

Some thoughts for the future (Economis, “Epic Fail”, March 24\textsuperscript{th} 2018)

- Tech firms need to open up to outsiders, safely and methodically
- Create an industry ombudsman: call it the Data Rights Board
- Set and enforce the rules by which accredited independent researchers look inside the platforms without threatening user’s privacy – software -
- Board could act as a referee for complaints
- How does micro-targeted skew pol. campaigns?
- What biases infect facial-recognition algorithms?
- GDPR gives users more power to opt out of being tracked online
Thank you very much for your attention!

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